

THE COURT: Would you come up Mr. Carroll and also Mr. Jenkins?

Mr. Jenkins, how old are you?

THE DEFENDANT: 24.

THE COURT: How far did you go in school?

THE DEFENDANT: Junior year in college.

THE COURT: Which college?

THE WITNESS: A&T State University

THE COURT: Which is it?

THE DEFENDANT: A&T State University.

THE COURT: Have you for any reason at all been in any hospital in the last couple of years?

THE DEFENDANT: I have been in the university infirmary.

[4] THE COURT: For what purpose?

THE DEFENDANT: For an ankle injury.

THE COURT: Anything else?

THE DEFENDANT: Also for a bronchial condition that I was treated for, X-rayed and after about two, three months' treatment, I was out.

THE COURT: How long ago was that?

THE WITNESS: This was in '70.

THE COURT: Are you all right now?

THE DEFENDANT: Yes.

THE COURT: Are you still being treated for it?

THE DEFENDANT: No.

THE COURT: In other words, you are better now, and you are not being treated any more?

THE DEFENDANT: No.

THE COURT: Mr. Carroll is your own retained attorney, is he?

THE DEFENDANT: Yes; he is.

THE COURT: You have talked to him about this case?

THE DEFENDANT: The—

[5] THE COURT: Seeking his advice as a lawyer?

THE DEFENDANT: Yes.

THE COURT: Has he explained to you what this case is all about?

THE DEFENDANT: Yes, sir.

THE COURT: Do you understand what he's told you about this case?

THE DEFENDANT: Yes, sir.

THE COURT: Is there anything about this matter that you don't understand? I am asking you these questions preliminarily to asking you why you wish to waive a jury trial. I want to make sure that you know what you are doing.

THE DEFENDANT: What was your—

THE COURT: My last question was, is there anything about this case that you don't understand?

THE DEFENDANT: No.

THE COURT: In other words, you are familiar with the situation, the reason you are here before this Court on this indictment?

THE DEFENDANT: Yes, sir.

THE COURT: Now, your lawyer and the [6] Government lawyer advised me that you wish to waive a jury trial here.

THE DEFENDANT: Yes.

THE COURT: You realize what you are giving up?

THE DEFENDANT: Yes.

THE COURT: You understand that if you wished, you are entitled to a jury trial, you are entitled to have this case tried by a jury, you know that?

THE DEFENDANT: Yes.

THE COURT: And the jury might or might not find you guilty, right?

THE DEFENDANT: Yes.

THE COURT: They could very well find you not guilty as well as they could find you guilty, right?

THE DEFENDANT: Yes.

THE COURT: If you waive that right, you have that right lost to you, you know that?

THE DEFENDANT: Yes.

THE COURT: And you would have the right at the close of the case to argue to the jury through your attorney as to why you think you [7] are not guilty, right?

THE DEFENDANT: Yes.

THE COURT: And you have 12 people in the jury who would decide your fate, you understand that?

THE DEFENDANT: Yes.

THE COURT: You are willing to give all that up and allow this Court to render a verdict with regard to you after hearing all the evidence against you?

THE DEFENDANT: Yes.

THE COURT: Now, you have talked about this waiver of a jury trial with Mr. Carroll, your lawyer, right?

THE DEFENDANT: Yes, I have.

THE COURT: Has he convinced you to do this or is this done by you voluntarily of your own desire after discussing it with Mr. Carroll?

THE DEFENDANT: Yes, it is.

THE COURT: Is it your own desire?

THE DEFENDANT: Yes, it is.

THE COURT: In other words, Mr. Carroll didn't say to you you should do this, did he?

THE DEFENDANT: No.

[8] THE COURT: He advised you regarding the case and told you the pros and cons of waiving a jury?

THE DEFENDANT: It's my decision.

THE COURT: And it is your decision.

THE DEFENDANT: Yes.

THE COURT: There is no language difficulty, is there, you understand everything?

THE DEFENDANT: Yes, sir.

THE COURT: Have you talked about this with your family?

THE DEFENDANT: The waiver?

THE COURT: Yes.

THE DEFENDANT: Yes.

THE COURT: They know about it?

THE DEFENDANT: Yes.

THE COURT: They know that you made this decision?

THE DEFENDANT: Yes, sir.

THE COURT: Now I ask you again, is it your choice, your desire, your wish to waive your rights to a jury trial in this case?

THE DEFENDANT: Yes, it is.

THE COURT: Now I have before me a waiver [9] of a jury trial dated October 3, today's date, which apparently is signed by you, Mr. Carroll and Mr. Warburgh. Will you look at those signatures? Is the top one yours and did you see Mr. Carroll and Mr. Warburgh sign that one?

THE WITNESS: I saw Mr. Carroll sign it.

THE COURT: Mr. Warburgh signed it after you, Mr. Carroll?

MR. CARROLL: I don't really—yes, I think he did.

THE COURT: But that is your signature?

THE DEFENDANT: Yes, it is.

THE COURT: Before I sign it, is there anything you want to ask me?

THE DEFENDANT: No.

THE COURT: May the record indicate that I am approving the stipulation waiving a jury trial by jury and that the case be tried to the Court without a jury. It's received and marked for identification.

Do you want to make a statement first? Do both of you want to make an opening statement?

MR. CARROLL: No, your Honor. I waive the right to make an opening statement.

[10] THE COURT: Mr. Carroll waives an opening statement.

MR. WARBURGH: Unless you want the Government to make an opening statement, I would waive that.

THE COURT: Both sides waive opening statements. Then call your first witness.

MR. WARBURGH: The Government calls as its first witness Mrs. Elaine Morris.

MR. CARROLL: Excuse me. Could I just request—

THE COURT: Elaine Morris.

What's the request, Mr. Carroll?

MR. CARROLL: I had two witnesses here. I just requested the witnesses excuse themselves.

THE COURT: They were your own witnesses?

MR. CARROLL: Yes.

THE COURT: You know they have a witness room right on the other side. They know that. Instead of



just standing out in the hall, they can sit down in that witness room.

[11] ELAINE MORRIS, called as a witness on behalf of the Government, after having been first duly sworn by the Clerk, testified as follows:

THE CLERK: Your address, Miss Morris? Is it Miss or Mrs.?

THE WITNESS: It's Miss.

THE CLERK: And your address?

THE WITNESS: 212 Linden Boulevard, Brooklyn, New York.

THE CLERK: Thank you. Be seated.

THE COURT: Mr. Carroll, if you have any difficulty hearing, let me know and we could put the mike on, we can activate the mike.

Miss Morris, try to speak up loudly.

MR. CARROLL: Would it be possible to do that now, rather than my having to interrupt her testimony?

MR. WARBURGH: Your Honor, by agreement of counsel I would like to offer into evidence what will be marked as Government's exhibit 1, which is the file of this defendant. Is that correct, Mr. Carroll?

MR. CARROLL: So stipulated.

[12] MR. WARBURGH: The Selective Service file.

THE CLERK: Selective Service file marked Government's exhibit 1 in evidence.

MR. CARROLL: So stipulated by the defense.

(So marked.)

## DIRECT EXAMINATION

BY MR. WARBURGH:

Q Miss Morris, would you tell the Court what your occupation is?

A I am executive secretary of Local Board Group.

Q Where is that local board located?

A 271 Cadman Plaza, Brooklyn, New York.

Q That local board is part of the Selective Service system; is that correct?

A That's correct.

THE COURT: What's that local board number?

THE WITNESS: Local Board 50.

Q Miss Morris, how long have you been connected with Local Board 50?

A Oh about 20 years.

Q Referring to Government's exhibit 1, which is [13] before you, can you tell the Court when the defendant, Ronald Steven Jenkins, registered with the local board?

A His date of registration was September 7, 1966.

Q Referring again to Government's exhibit 1, can you locate in there a document entitled, "Classification questionnaire, form 100"?

A Yes.

Q Referring to that document, Classification questionnaire form 100, can you tell the Court—

THE COURT: Does Mr. Carroll have a copy of that?

MR. CARROLL: I have.

MR. WARBURGH: I believe the defendant has a copy of the entire file.

THE COURT: I just want to make sure we were together on the one he's talking about.

Q Referring to that form 100 classification questionnaire, can you tell the Court the date that that questionnaire was sent to the defendant?

A It was mailed on September 9, 1966.

Q Can you tell the Court whether that questionnaire was returned by the defendant?

A Yes, it was.

Q What date was that?

[14] A It was received by the local board on September 23, 1966.

Q Referring again to that questionnaire, did the defendant complete the conscientious objector part of that questionnaire?

A No, he did not.

Q Referring to the part of the questionnaire involving physical condition, did the defendant complete any part of that part?

A Yes, he did.

Q Can you read what he completed?

A Yes. He completed series two. He stated, "hip operation."

Q Was that in response to a question on the questionnaire number two?

A Yes.

Q What was that question?

A It asks: "If you have any physical or mental condition in your opinion which would disqualify you for service, state the condition and attach a physician's statement."

Q And his response to that was what?

A "Hip operation."

Q Referring again to Government's exhibit 1, [15] specifically to minutes of action, on September 27, 1966, did the local board send the Defendant a letter, form 56?

A Yes.

Q Can you locate that in the file?

A Yes.

Q What is the date of that letter?

A September 27, 1966.

Q Can you tell the Court what that letter says?

A Well, the letter requests the registrant to submit medical evidence to the local board within one week and to include statements from doctors who have treated him, reports from hospital, if confined or treated. Those reports were to give specific information as to the diagnosis, dates and types of treatment and any other information which was considered necessary to fully explain his physical defects.

Q Referring to Government's exhibit 1 was there any response to that letter?

A No, there was—yes, there was.

Q What was that response?

A A letter was received and a clinic card from registrant's mother.

Q Can you indicate to the Court what that letter from the mother said?

[16] A Do you want me to read it in its entirety?

Q Why don't you read it in its entirety.

A It says: "I am writing in reference to the letter you wrote my son Ronald Jenkins. He sent me the letter to write you as he is in college in Morristown, Tennessee and can't get the medical reports that you need. Right now I am sending you his medical center card. He has to report to them every year since his operation. I will have to write to his other doctor and have him send in a report which takes time. I'm sending you the doctor's name, which is Dr. H. Simmons, 545 Nostrand Avenue, Brooklyn, New York. I will also write to medical center.

"I hope you understand why this will take more than a week as you specified in your letter. Any other information that you need that will have to be gotten from Brooklyn or Manhattan, please write to me.

"Thank you for your kindness.

"Yours truly, Mrs. Phyllis Jenkins."

Q Was there any other information that was sent to the local board in response to that form 56 that was filed, that was sent to the defendant?

A No. At that time no, there wasn't.

Q Now referring to Government exhibit 1, the minutes of action by local board, can you tell the Court [17] whether on October 5, 1966—strike that.

On October 19, 1966 did the local board classify the defendant 2-S?

A Yes, they did.

Q How long was that classification to remain?

A Until October of '67.

Q Previous to October, 1966 had the defendant been classified at all?

A No, he was not.

Q Again referring to Government's exhibit 1, the minutes of action by the local board, on November 15, 1967 was the defendant again classified 2-S?

A Yes, he was.

Q Was that classification to remain until October of 1968?

A Yes.

Q Again referring to Government's exhibit 1, the minutes of local action, on January 15, 1969 was the defendant again classified 2-S?

A Yes.

Q Was that classification to continue until October 1969?

A Yes.

THE COURT: Until October, 1969?

[18] MR. WARBURGH: Yes, your Honor.

Q Again referring to the minutes of action by the local board, on October 29, 1966 was the defendant again classified 2-S?

A Yes.

Q Was that classification to remain until October of 1970?

A Yes.

MR. CARROLL: Objection as to leading, your Honor.

THE COURT: It is leading, but it saves a lot of time.

MR. WARBURGH: The file is in evidence.

THE COURT: The whole file is in evidence. The question is nevertheless leading, but in order to expedite this I will allow it. I will give you some latitude with respect to that.

We have no jury here. If you wish, I can ask him not to lead, but we're going to get to the same—

MR. CARROLL: We are getting to crucial parts at this point.

THE COURT: If you think that we are, then make your objection.

[19] Q Now Miss Morris, referring to the minutes of the local board action, specifically to November 18, 1970, can you tell the Court what occurred on that day?

A The registrant was classified 1-A.

MR. WARBURGH: May I have this document marked as Government exhibit 2?

THE CLERK: Government exhibit 2 for identification, one blank notice of classification card.

(So marked.)

Q Miss Morris, are you familiar with the procedure of the local board after a defendant has been classified 1-A?

A Yes, I am.

[20] Q Would you please explain to the Court what happens?

A After classification, form 110, notice of classification—

Q You are referring now to Government's exhibit 2 for identification; is that correct?

A Yes.

Q Would you explain to the Court what happens?

A Form 110, Notice of Classification, is mailed to the registrant advising him of the Board's determination.

Q Referring to Government's exhibit 2 for identification, are there certain rights that the defendant is told that he has?

A Yes.

Q Can you tell the Court what those rights are?

A The registrant is advised that if he is not in agreement with the classification that was arrived at by the local board, he has rights of appeal.

Q That is explained on form 110; is that correct?

A That's correct.

Q After the defendant was classified 1-A on November 18, 1970, did the defendant exercise any of these rights to appeal?

THE COURT: First of all I want to know if such a notice was sent and when.

[21] Q Referring to the minutes of the local board action, was such a notice sent to the defendant?

A Yes, it was.

Q When was that sent?

A November 24, 1970.

THE COURT: Was that similar to the one that you were looking at there, Government's exhibit 2 for identification?

THE WITNESS: Yes, it is.

Q After November 22, 1970, did the defendant exercise any of these rights?

THE COURT: November 24 is the date?

THE WITNESS: Yes.

Q Did the defendant exercise any of these rights to appeal?

A No, he did not.

Q Referring to the minutes of action in Government's exhibit 1, on January 12, 1970 can you tell the Court what the local board did with respect to this defendant on that day?

A Yes. We mailed him a notice of pre-induction examination for January 20, 1971.

Q Do you have a copy of that notice in the file?

[22] A Yes, I do.

THE COURT: What's the date of that notice?

THE WITNESS: January 12, 1971.

THE COURT: To report for a pre-induction when?

THE WITNESS: On January 20, 1971.

Q Referring to that notice to report for a physical examination, can you read the paragraph in bold type?

A It states: "If you have had previous military service or are now a member of the National Guard or a reserve component of the Armed Forces, bring evidence with you. If you wear glasses, bring them. If you have any physical or mental condition which, in your opinion, may disqualify you for service in the Armed Forces, bring a physician's certificate describing that condition if not already furnished to your local board."

Q Now referring to Government's exhibit 1, on January 20, did the defendant report for this physical examination?

A Yes, he did.

THE COURT: Does that notice of pre-induction exam have a form notice?

THE WITNESS: The form number is SSS form 223.

[23] THE COURT: Now, you can refer back to Mr. Warburgh's question. You asked her whether he reported as a result of that physical induction notice.

MR. WARBURGH: I believe the witness' answer was "yes."

Q Did the local board subsequently receive—

THE COURT: When did he report, will you records show when he reported for that exam?

THE WITNESS: Yes. He reported on January 20, 1971.

Q Did the local board subsequently receive, after January 20, 1971, any communication from the physical examination concerning the defendant's acceptability?

A Yes.

Q What was that notification?

A "Received registrant's papers and a statement of acceptability, form 62."

Q Did that form indicate he was acceptable for induction into the Armed Forces?

A Yes, it did.

Q Referring to the medical papers that were received along with that notice of acceptability, did the defendant at the time of the examination indicate that he [24] had a hip condition?

A Yes he did.

Q Referring to the report of the examination, would you tell the Court what was stamped on the examination form?

A "Registrant advised to present medical evidence to support unverified ailments."

Q Now I am going to direct your attention to February 4—

THE COURT: Before you leave that, who signed that form 62?

THE WITNESS: C. O. Dunn, Second Lieutenant, AGC.

THE COURT: What's that?

THE WITNESS: That's all part of his title AGC.

Q Now, referring to the minutes of action of Government's exhibit 1, specifically to February 4, 1971, can you tell the Court what occurred on that day?

A On February 4, 1971, an induction notice was mailed to the registrant for February 24, 1971.

Q Now, Miss Morris, you are familiar with the procedure of the local board in the mailing of these induction notices; is that correct?

[25] A That's correct.

Q Would you tell the Court what the procedure is?



A After receiving the order of call, we then pulled the first men available for induction.

Q During what part of the day is that done?

A The call is pulled in advance to sending out the notifications.

Q In other words, it's some day prior to sending out the notices for induction?

A That's right.

Q On the day that the notices of induction are sent, what time of day are they sent?

A In the morning.

Q What time is mail received by your office?

A The latter part of the morning.

Q Now referring to a letter from the Presbyterian Hospital dated January 26, 1971, can you tell the Court when that was received by the local board?

A On February 4, 1971.

THE COURT: Received February 4th?

THE WITNESS: Yes.

Q Can you read to the Court what that letter says?

[26] A It's addressed to the local board and it says: "Gentlemen: We have been requested to send you a report. Accordingly we are enclosing a photostatic copy of a letter dated July 14, 1965, which summarizes this patient's case. We have not seen this patient since that time."

Q There were attachments to the letter; is that correct?

A That's correct.

Q And it is your testimony that the induction notices are mailed in the morning?

A That's correct.

Q And the mail that the local board receives on each day is received later on in the morning?

A That's correct.

Q Can you tell the Court whether this letter from the hospital was received before or after the induction notice was sent?

A It was received after the induction notice was sent.

THE COURT: Do you have a time stamp on that?

THE WITNESS: We don't have any time stamps.

THE COURT: Do you have any stamp on that?

THE WITNESS: Yes, we have the local board [27] with the date on it.

THE COURT: What does that stamp indicate?

THE WITNESS: The stamp indicates the number of the local board, the date and the address of the local board.

THE COURT: February 4th?

THE WITNESS: February 4th, correct.

Q Are you familiar with the procedure of the local board concerning any communications that are received by the local board after an induction notice is sent?

A Yes, I am.

Q What is that procedure?

A Anything received by the local board after the induction notice is sent is referred to our New York City headquarters and to our local board members for any consideration, if it is warranted.

Q I refer you to minutes of action of local board, Government's exhibit 1, specifically on February 9, 1971. Can you tell the Court what occurred on that day?

A The registrant appeared at the local board on February 9 and he filed a memo and a 127. He refused to complete the 127 and the memo that was filed stated so.

Q What is form 127?

A It's a current information questionnaire. It's an [28] up-date.

Q Now, referring to the minutes of action of Government's exhibit 1, on February 28, 1971, can you tell the Court what occurred on that day?

A The registrant appeared at the local board.

MR. CARROLL: Objection. I think you misread that.

MR. WARBURGH: That's the 23rd, your Honor. I'm reading from a Xerox copy.

A The registrant appeared at the local board October 23, 1971 and he requested form 150.

Q What is form 150?

A That's a conscientious objection claim form.

Q Did the defendant on that day give the local board any documents?

A Yes, he did.

Q What was that document?

A That was his request for a conscientious objector form 150.

Q Can you read to the Court what that says?

A It states: "I am requesting a C.O. 150 form on the grounds that I am morally opposed to the present war and on these moral grounds I don't feel that I could take part in any effort which would or could in any way perpetuate this [29] war. "Signed Ronald Jenkins.

Q Referring back to the induction notice that was mailed on February 4, 1971, what was the date that he was scheduled to report for induction?

A February 24, 1971.

Q Referring to the minutes of action—

THE COURT: He was to report on what date?

THE WITNESS: February 24, 1971.

Q Referring to minutes of action of Government's exhibit 1—

THE COURT: Before you go there, I had down here on 2/4 the induction order was sent to him to report on 2/12.

THE WITNESS: No, he was supposed to report on February 24, 1971.

THE COURT: I don't know where I got 2/12.

THE WITNESS: That's my address.

THE COURT: I have that too.

Q Referring to the minutes of action of Government's exhibit 1, did the local board receive notification as to whether this defendant reported for induction?

A Yes.

[30] Q Did he report for induction?

A No, he did not.

Q When was the local board notified of that?

A On March 8, 1971.

Q Again referring to the notice to report for induction, referring to the notice that was sent to report for induction and referring to the paragraph in bold type and the several words above that, can you read that to the Court?

A "Important notice." Then in parenthesis it states: "Read each paragraph carefully."

[31] Q Would you read the paragraph?

A "If you have had previous military service or are now a member of the National Guard or a reserve component of the Armed Forces, bring evidence with you. If you wear glasses, bring them. If married, bring proof of your marriage. If you have any physical or mental condition which, in your opinion may disqualify you for service in the Armed Forces, bring physician's certificate describing that condition if not already furnished to your local board."

Q Now referring to the minutes of action of Government's exhibit 1, on March 30, '71, can you tell the Court what occurred on that day with respect to this defendant?

A We received form 150.

Q Form 150 requests a classification as a conscientious objector; is that correct?

A That's correct.

Q Referring to the minutes of action of Government's exhibit 1, was any action taken with respect to this request for classification as a conscientious objector?

A Yes.

Q Can you tell the Court what action if any was [32] taken by the local board?

A The local board mailed the entire file and the form 150 to our New York City headquarters.

Q Did you receive any communication from the New York City headquarters after the file had been mailed?

A Yes.

Q What was that communication that was received from New York City headquarters?

A It advised the local board of certain actions pertaining to their request for information and also it stated that: "In view of the above, that the registrant was to be reported to the U.S. Attorney for prosecution on form 301."

THE COURT: What's the date of that?

THE WITNESS: This is dated August 31, 1971.

THE COURT: Who signed that?

THE WITNESS: This is signed by the chief attorney of our New York City headquarters.

Q At the time that the defendant originally presented himself at the local board on February 23, 1971, requesting a form 150, was the New York City headquarters contacted on that day?

A Yes, they were.

Q Did the local board receive certain information [33] from the New York City headquarters?

A Yes.

Q Can you tell the Court what that information was?

A The local board was directed to correspond with the registrant and to forward him a form 150, conscientious objector form, and also advise him of his order to report for induction, his request for postponement was denied.

THE COURT: What date was that?

THE WITNESS: This was on February 23, 1971.

Q With respect to the medical information that was received by the local board on February 4, 1971, what did you do with it? What did the local board do with it?

THE COURT: Are you referring to the letter she received from the Presbyterian Hospital?

MR. WARBURGH: Yes, your Honor.

A At the time of submitting the registrant's papers, record of induction papers to the station, medical information was included.

Q If the defendant had reported for induction, would this information that you had received be at the place where he should have reported for induction?

A Yes.

[34] MR. CARROLL: Objection.

THE COURT: In normal course of the work, first of all, you did what with it when you received the letter from the Presbyterian Hospital which incorporated a photocopy of a report dated back in 1965—is that right?

THE WITNESS: Yes.

THE COURT: With a notation saying they had not seen him since that time?

THE WITNESS: That's correct.

THE COURT: What did you do with that, just put it in the file, or did you do something about it?

THE WITNESS: No, at the time of submitting the registrant's record of induction that was to be determined by the doctors at the Armed Forces examining station, the medical information was attached to these records.

THE COURT: So that it was sent to AFES when?

THE WITNESS: It was forwarded on on February 9, 1971.

THE COURT: Then after they report what do they do, send it back to you?

[35] THE WITNESS: That's correct.

THE COURT: And then when you send out the notice of induction, do you incorporate those papers and send them on to the place where he is to report?

THE WITNESS: Yes, sir.

THE COURT: And it was sent to the place where he was to report on February 24th?

THE WITNESS: That's correct.

Q Do you know what the examining station would have done with this information that was sent to it?

MR. CARROLL: Objection.

Q Do you know?

THE COURT: If she would know.

A Yes.

Q What would they have done?

A The medical doctors would consider the medical information at the time of examination.

THE COURT: In other words, there is a medical examination again at the time of induction?

THE WITNESS: That's correct.

THE COURT: The one we were talking about was a pre-induction one at the time of his classification?

[36] THE WITNESS: That's correct.

THE COURT: All these papers are sent by you regarding a registrant in order to give the induction center all the information that's in your file that might help them in making their determination and their examination?

THE WITNESS: That's correct.

MR. WARBURGH: I have no further questions.

MR. CARROLL: I just have a few questions.

THE COURT: As far as you know, Miss Morris, those papers, including that medical report, were in the hands—at least you mailed them out prior to the 24th of February?

THE WITNESS: That's correct.

THE COURT: Do you recall how many days before that day? Would your papers show?

THE WITNESS: Yes, my list. It was mailed on February 9th.

### CROSS EXAMINATION

BY MR. CARROLL:

Q I refer your attention to Government's exhibit No. 1, the minutes of action by the local board, to October 5, 1966. Could you please tell me what occurred [37] on that date?

A I had received a letter of information and a clinic card from the registrant's mother.

Q Referring to the letter received from the registrant's mother, could you please read the last paragraph?

THE COURT: Is that the one she read earlier?

MR. CARROLL: Yes. I just want her to read the last paragraph.

THE COURT: I just want to make sure I know which one you are talking about.

The last paragraph said something, "If you need anything in Brooklyn or Manhattan, let me know" referring to herself.

THE WITNESS: "Any other information that you need that would have to be gotten from Brooklyn or Manhattan, please write to me.

"Thank you for your kindness. Yours truly, Mrs. Phyllis Jenkins."

Q Referring your attention again to Government's exhibit 1, minutes of action of the local board, was there any response by the local board to that letter?

A No, there wasn't.

[38] Q Referring your attention to October 23rd, 1967, which is noted on the minutes of action of the local board, did you receive a form 127 on that date?

A Yes, I did.

Q Reading from series 7, part 2, of the form 127, was there any response noted there by the registrant?

A No.

Q What is the question that is asked at that point in the form 127?

A It's pertaining to physical condition.

Q Could you read that please?

A The first question is: "If you were ever rejected for service in the Armed Forces, state when and where.

"2. If you have any physical or mental condition which in your opinion will disqualify you from service in the Armed Forces, state the condition and attach a physician's statement if not previously submitted.

"3. —"

MR. CARROLL: That will be sufficient. Thank you.

Q Referring yourself to the minutes of action of the local board at February 17, 1969, was a form 127 received on that date?

A Yes, it was.

[39] Q Again directing yourself to series 7 of that form, part 2, was there any response by the registrant to the questionnaire?

A Yes.

Q What was the response?

A "Hip pelvis operation."

Q Again referring yourself to the minutes of action of the local board on March 5, 1970, was there any response at series 7 part 2 by the registrant to the question asked therein?

MR. WARBURGH: I have a copy of the minutes of the local board.

MR. CARROLL: I am sorry. I might be wrong.

MR. WARBURGH: You said March 5th.

MR. CARROLL: Excuse me, your Honor. My notes are incorrect. I will have to go through this again.

Q Referring yourself to Government's exhibit 1, is there a form 127 in the file which is marked, "Received by local board No. 58 March 5, 1970"?

A No, there is not.



MR. CARROLL: The problem, your Honor, is the receipt of the form 127 was not noted in [40] the minutes of action of the local board. There seems to be a problem there.

THE COURT: That would be a third 127 form?

MR. CARROLL: That's a current information questionnaire.

THE COURT: Yes. But there were receipts of those forms indicated on the record for one received in February of '69 and one prior to that.

MR. CARROLL: Yes.

THE COURT: So this would be the third so-called 127 form which was filed?

MR. CARROLL: That's correct.

Q Do you have that form before you?

A Yes, I do.

Q Now referring yourself to series 7, part 2, was there any response to that question by the registrant?

A Yes, there is.

Q What is the response?

A "Hip pelvic operation."

Q Could you please read the statement in the form 127 directly prior to that response? That's series 7, part 2.

A You want me to read part 2?

[41] Q Yes.

A It says: "If you have any physical or mental condition which in your opinion will disqualify you for service in the Armed Forces, state the condition and attach a physician's statement if not previously submitted."

Q Referring yourself to DD form 47 filed on January 13, 1971, which is in the file marked Government's exhibit no. 1—do you have that form before you?

A Yes, I do.

THE COURT: What's that form number?

MR. CARROLL: That's a DD form 47.

Q Could you please read item 16A for the benefit of the Court?

A 16A states: "List all defects and diseases claimed by the registrant and any defects or diseases which the

registrant may have and which are known to the local board."

Q What was the response?

A "None."

THE COURT: Is it just blank, or did he say, "None"?

THE WITNESS: No, none.

Q I refer you back to the form 100.

THE COURT: What's the date of that DD form 47?

[42] MR. CARROLL: That was January 13, 1971.

Q I refer you back to the form 100, classification questionnaire. I refer you to series 8. Could you please read the statement in small type under series 8?

A It states: "Claim to be a conscientious objector by reason of my religious training and belief and therefore request the local board to furnish me a special form for conscientious objector, SSS form 150."

Q Was there any response?

Was that section signed?

A No, it was not.

THE COURT: What did you ask, if that section was signed?

MR. CARROLL: Yes.

Q I refer you back to the minutes of action of the local board to February 18, 1971, and I ask you whether you received any document from the registrant on that date?

A Yes.

Q Do you have that document before you?

A Yes, I have the document before me.

Q Could you please read that?

A It's addressed to local board 50. It states: "In relation to an order of induction to the Armed Forces of the United States scheduled for February 24, 1971, I would [43] like to request a C.O. form 150."

Q Was any action taken by the local board pursuant to that letter?

A Yes.

Q Could you please tell me what that action was?

A Our New York City headquarters was contacted.

Q I'm asking you, pursuant to the letter that was filed on February 18, 1971, which was dated February 17 of 1971, was any action taken?

A No, there was nothing taken at that time.

Q Now on February 23, 1971—

THE COURT: That was a letter, if I follow you, to the local board by the registrant dated February 17th?

THE WITNESS: That's right.

THE COURT: It's his letter dated the 17th?

THE WITNESS: It's dated February 17. It was received by the local board February 18, 1971.

THE COURT: That was subsequent to the day he was to report for induction?

THE WITNESS: That's correct.

MR. CARROLL: Excuse me, your Honor. [44] That was subsequent to the date of the—that the induction order was sent out. The date he was supposed to report for induction was February 24th.

THE COURT: Right. I'm sorry. What I meant was subsequent to the date of the induction notice, not the date he was to be inducted.

Q Referring yourself to a report of information form SSS form No. 119 filed on February 23, 1971, do you have that form with you?

A Yes, I do.

Q Could you please read that form to yourself, please?

A (Witness complies.)

[45] Q Do you have any personal knowledge of the transaction that occurred in this particular instance?

A Yes.

Q Did you see the registrant yourself on that day?

A Yes, I did.

Q Could you please tell me from your own recollection what occurred on that date?

A Well, the registrant came into the local board and he had followed his request and I turned the registrant over to my assistant to complete action.

Q Is that the only contact that you had with the registrant on that date?

A No. The clerk submitted the form 119—you know, submitted the information to me in regards to what the

registrant wanted and I instructed her to contact New York headquarters, which he did, had her make up the report of information.

Q Could you please read from the report of information form 119?

A In its entirety?

THE COURT: Is that what you want, the whole thing?

MR. CARROLL: Yes. It's very short.

[46] A It states: "contacted New York City—"

THE COURT: Are we now talking about the same one you were referring to a moment ago?

THE WITNESS: That's correct.

THE COURT: What's the date of that?

THE WITNESS: It's dated February 23, 1971. "Contacted New York City headquarters, spoke to Mrs. Broadhurst, Legal Division, informed her that registrant reported to this local board and requested a C.O., SSS form 150; also informed her that registrant is under an outstanding induction for February 24, 1971. Mrs. Broadhurst instructed to have registrant write a statement as to the type of beliefs he has and what are they based on. In this order they could determine if the registrant wanted a postponement of his induction. Registrant wrote a statement which I read to Mrs. Broadhurst. Mrs. Broadhurst conferred with Major Maher, who in turn, denied registrant's request for postponement of induction. Mrs. Broadhurst instructed to issue registrant SSS Form 150 and letter directing the registrant to report for induction on February 24, 1971 as ordered. Mrs. Broadhurst dictated the letter [47] that is to be issued to registrant." Signed by clerical assistant to the local board.

Q Is this short note dated February 23, 1971 signed by the registrant, Ronald Jenkins, which states: "I am requesting a C.O. 150 form on the grounds that I am morally opposed to the present war and on these moral grounds, I don't feel that I could take part in any effort which would or could in any way perpetuate this war"? Is that a statement that the registrant submitted on that date?

A Yes.

Q Mrs. Morris, have you had in your duties with the local board any prior experience with individuals requesting a C.O. form 150 after they had received an induction notice, but before their date of induction?

A Yes.

Q Was it the usual practice for you to have these individuals write a short statement of their beliefs?

MR. WARBURGH: Your Honor, I'm going to object to that question. I don't think it's an issue before the Court at this time.

THE COURT: If she knows, I will let her answer. There is no jury here.

A Well, after a registrant—

THE COURT: Of course it's immaterial to [48] the issues here. It's not relevant to the issues in this case, what she has done in others. If you want me to know about it, I will be glad to know about it. I am just wondering what the relevancy is to the issue involved.

MR. CARROLL: I think I will be able to tie it up.

THE COURT: I will give you some latitude if you wish to develop that, if you wish.

What is the usual custom when you receive a notice requesting a form 150, subsequent to the date that the notice of induction is issued, and prior to the date of induction?

THE WITNESS: We contact our New York City headquarters and they, in turn, issue the instructions to us.

THE COURT: Is that what you did in this instance when you read from the form 119?

THE WITNESS: Yes.

Q Did you in fact give the registrant the form 150?

A Yes.

Q Can you tell from the minutes of action of the local board when the form 150 was received?

[49] A On March 30, 1971.

Q Did the local board take any action pursuant to this receipt of form 150?

A No, because the local board didn't have any jurisdiction at the time.

THE COURT: That was after March 30th, when you received the 150. Now prior to that time, on February 23rd, if I understood you correctly, you were talking to a Mrs. Broadhurst over the telephone at the New York City office?

THE WITNESS: That's correct.

THE COURT: You read his short statement with regard to his beliefs?

THE WITNESS: That is correct.

THE COURT: And did I hear you say something that somebody there denied it?

THE WITNESS: A request for postponement.

Q Referring your attention to SSS form No. 150, which I think you have before you, can you please read these words at the top ?

A It says: "Complete and return within 30 days."

Q Mrs. Morris, after the registrant submitted to you his statement on February 23 of 1971, prior to the receipt of the form 150, did you receive any other [50] correspondence from the registrant?

A Yes. Prior to February 23rd, you state?

THE COURT: Prior to March 3rd—

Q Prior to your receipt of the form 150 from the registrant, but after February 23 of 1971, did you receive any other correspondence from the registrant?

A Yes, I received a letter.

Q Could you please read that letter for the benefit of the Court?

THE WITNESS: Bear with me. They are not in order after all this time.

THE COURT: Especially after this questioning.

Q Just read the first paragraph.

A It states,—it's addressed—

THE COURT: The date first.

THE WITNESS: It's dated March 4, 1971, it's addressed to Major Maher and it states:

"The C.O. 150 form which I have requested is on the grounds that I am morally opposed to all wars and on these moral grounds I could not take part in any effort which would or could possibly in any way help perpetuate any war."

MR. CARROLL: All right, I have no [51] further questions.

THE COURT: Miss Morris, the minutes of action of September 27 indicate that you sent out a form 156 on that date requesting the submission of medical evidence in one week, etcetera.

THE WITNESS: That's correct.

THE COURT: You said that you received no answer from the registrant but you received a letter from the mother with a clinic card?

THE WITNESS: Yes.

THE COURT: What was the date of that letter from the mother?

THE WITNESS: We received it on October 5th. Her letter is dated October 4, 1966.

THE COURT: Dated October 4, '66?

THE WITNESS: That's correct.

THE COURT: Now, the clinic card which was attached is that from a hospital, the clinic from some hospital, or is it any particular place?

THE WITNESS: The card stated Vanderbilt Clinic.

THE COURT: What's the date of that card?

[52] THE WITNESS: The only information that we recorded from the card is the date of the last appointment and it was only one appointment and that was July 2, 1965.

THE COURT: '65?

THE WITNESS: That's correct.

THE COURT: You were asked by Mr. Carroll if you answered her letter and you said that there was no answer.

THE WITNESS: No, there wasn't.

THE COURT: The letter didn't ask, did it, for anything from you; it just explained the reason for the delay that might be necessary in producing other medical reports; isn't that right?

THE WITNESS: That's correct.

THE COURT: In other words, the mother wasn't asking for the board to write her for any particular purpose?

THE WITNESS: No.

THE COURT: She was just saying that was the reason for her delay and she wanted you to know that there was anything in Brooklyn or Manhattan, to write to her?

[53] THE WITNESS: That's correct.

THE COURT: But that wasn't for you to go out and look for something in Brooklyn or Manhattan to write her about, was it?

THE WITNESS: No, it wasn't.

THE COURT: That 127 form—I see there were three. Each one of them says state your condition, etcetera, medical or otherwise and submit proper forms.

THE WITNESS: That's correct.

THE COURT: You never received anything except thereafter the Presbyterian Hospital letter; is that right?

THE WITNESS: That's correct.

THE COURT: And they attached to their letter a photocopy of a report which is dated back to 1965?

THE WITNESS: That's right.

THE COURT: What was the date of the letter from the hospital?

THE WITNESS: The letter is dated January 26, 1971.

THE COURT: Is there anything in that letter other than just a statement that they [54] are attaching the hospital record?

THE WITNESS: That is correct. As well as they stipulated that they have only seen the registrant on the one occasion.

THE COURT: On one occasion, which was in 65?

THE WITNESS: That's right.

THE COURT: Look at that report, what was that one occasion they saw him?

THE WITNESS: They made mention—well, they made mention of the fact that they were enclosing the photostatic copy of a letter dated July 14, 1965 which summarized the patient's case.

THE COURT: That letter was signed by whom?

THE WITNESS: It was signed by—

THE COURT: Not the one you are looking at; the one they are enclosing.



THE WITNESS: Signed by the Assistant Vice President, Medical Information, Joseph E. Schneider, Medical Doctor.

THE COURT: Is there anything in that report which indicates what the final diagnosis [55] was as of the date of that letter?

THE WITNESS: Yes. It states the diagnosis was deformity of the left hip due to acute suppurative arthritis.

THE COURT: What was the date of that?

THE WITNESS: Registrant was admitted — first seen at their orthopedic hospital and was admitted on June 29, 1949 and discharged on September 6, 1949.

THE COURT: Was the operation performed within those days?

THE WITNESS: Yes, it was.

THE COURT: And he was discharged when?

THE WITNESS: September 6, 1949.

THE COURT: From that day on, does that record of the hospital show they saw him a number of times?

THE WITNESS: Yes, it does.

THE COURT: And they saw him up to when?

THE WITNESS: June 25, 1965.

THE COURT: And on June 25, was he discharged or did he just stop going there?

THE WITNESS: He just stopped going.

THE COURT: Is there anything in there [56] which would indicate? Is there in there to indicate when he last was there for examination?

THE WITNESS: A covering letter from the Presbyterian dated—

THE COURT: Not the letter. On the report.

THE WITNESS: No, there isn't anything here at all.

[57] THE COURT: The date of discharge is June of '65—I mean June of '49.

THE WITNESS: He was admitted to the hospital on June 29, '49. He was discharged on September 6, '49.

THE COURT: Thereafter I guess he was coming into their outpatient clinic?

THE WITNESS: I don't know. The only thing the letter states is they were attaching a copy of the X-ray report taken on June 25, 1969.

THE COURT: May I see that, please?

(Documents handed to Court.)

THE COURT: The letter signed by Dr. Joseph E. Schneider dated July 14, which was his letter to a Dr. Maurillo, states: "In answer to your recent inquiry, the above-named patient has been followed here since 1949. He was first seen at our New York Orthopedic Hospital and was admitted on June 29, 1949, and discharged on September 6, 1949. While admitted he underwent an incision and drainage of the left hip. The diagnosis was deformity of the left hip due to acute suppurative arthritis. He has been [58] followed here since then and when seen in orthopedic clinic on June 24, 1965, he had become asymptomatic and participated in activities in soccer and track. Within the past several months, however, he had developed pain in both knees, especially with climbing stairs. Range of motion of the hips revealed flexion on right 135, left 135."

The rest, I guess, is of no significance to us here.

Now, looking at the Presbyterian Hospital report, Department of Radiology, dated June 25, 1965, X-rays were taken of both knees and the impression, after examination, is as follows:

"Essentially normal knees."

Thank you, Miss Morris. (Handing.)

That letter was written by the hospital officer, Dr. Romillo. Was that part of the information that was sent to you by the hospital?

THE WITNESS: Yes.

THE COURT: Is Dr. Romillo attached to the local board?

THE WITNESS: No, he is not.

THE COURT: I am trying to ascertain [59] why the letter to him. Did that come to you through the hospital record?

THE WITNESS: This all came together.

THE COURT: Was that set of papers from the hospital sent to you at your request or did it come to you at the request of somebody else, that information?

THE WITNESS: It would be at the request of somebody else.

THE COURT: You just received this?

THE WITNESS: That's correct.

THE COURT: All right.

MR. WARBURGH: Your Honor, I just have a few questions on redirect.

### REDIRECT EXAMINATION

BY MR. WARBURGH:

Q Miss Morris, after the local board received the letter from the defendant's mother in 1966, what classification was the defendant placed in?

A He was placed in class 2-S.

Q And directing your attention to—

THE COURT: That's already been elicited. He was placed in 2-S classification on three separate occasions subsequent to then, in '67, [60] '69 and '69, and then on November 18, 1-A.

Q Directing your attention to the material that was sent to the local board from the AFES station Armed Forces, is there anything in the reports that were sent by the AFES station that indicated that the defendant had noted anything concerning a hip condition?

A Yes.

Q Is there anything in those papers that indicates whether or not the doctors noted this hip condition?

A Yes.

Q What is that notation if you can read it?

A Well, the first word is "Had."

Q "Had." And the second word appears to be undecipherable.

A The third word is "surgery."

Q At the—"of one year." Is that what it indicates?

A That's correct.

Q Was there any other notation made concerning the hip condition?

A Yes.

Q What notation?

A "Had," or the word—second word is not readable or [61] the third word. Then it says, "Surgery one year old."

THE COURT: It shows an awareness that they had seen and heard of the operation?

MR. WARBURGH: Yes.

I have no other questions.

THE COURT: Does that report indicate their findings with respect to the hip condition if they examined it?

THE WITNESS: Yes.

THE COURT: May I hear what they say?

THE WITNESS: At the time that—this all took place at the time of his physical examination and the statements we just read, and they put their stamp on the forms, stating that the registrant was advised to present medical evidence to support unverified ailments.

THE COURT: That was the examination—that was his physical examination and that was on January 20, 1971.

MR. WARBURGH: One more question.

BY MR. WARBURGH:

Q Did the examining station determine whether he was acceptable to be inducted?

THE COURT: She said that earlier, as a [62] result of that.

Q As a result of the examination?

A Yes.

MR. WARBURGH: I have no other questions.

THE COURT: Anything else, Mr. Carroll?

MR. CARROLL: No further questions.

THE COURT: All right, thank you, Miss Morris.

(Witness excused.)

MR. WARBURGH: Your Honor, the Government would call as its next witness Mr. Thomas Maher.

[63] THOMAS MAHER, called as a witness on behalf of the Government, after having been first duly sworn by the Clerk, testified as follows:

DIRECT EXAMINATION

BY MR. WARBURGH:

Q Mr. Maher, what is your present occupation?

A I am an Assistant United States Attorney in the Eastern District of New York.

Q Mr. Maher, in January and February and March of 1971 what was your occupation at that time?

A I was employed by Selective Service Headquarters, State Headquarters in New York City as Chief of the legal division in New York City headquarters.

Q In connection with your official duties during that time period did you have occasion to become involved in the case concerning Ronald Jenkins?

A Yes, I did.

MR. CARROLL: Your Honor, may I note an objection at this point, particularly I did not know that Mr. Maher would be called as a witness.

THE COURT: You certainly did. Didn't I tell you that that was one of the reasons why [64] I was granting your motion to ask Mr. Maher to be relieved?

MR. CARROLL: Yes. I knew that there was always the possibility that Mr. Maher would be called as a witness.

THE COURT: In fact—

MR. CARROLL: But I excluded my witnesses at the start of the case.

THE COURT: Is that what you are driving at, that he was here?

MR. CARROLL: Yes. And I just claim—

THE COURT: In what way do you think that prejudiced you? Miss Morris did nothing more than just testify from what appeared on the record, which could all have been done, by the way, without even asking her a question, because the whole file went into evidence and I could have read that record the same as she read it

to us, so I don't know where the prejudice is in his being here that time.

MR. CARROLL: Yes. I see, your Honor. But I still just claim as a matter of fundamental fairness that the Government should also exclude witnesses.

[65] THE COURT: Yes, I agree with you.

First of all when you asked your witnesses to leave, you might just have well have suggested to Mr. Warburgh that he do the same, and he didn't, and I would have done the same thing for him as I did for you, but it's done now, and are you making any point of it now beyond that?

MR. CARROLL: No. I just wanted my objection noted for the record.

MR. WARBURGH: May I say, Mr. Maher, sitting at the counsel table, his presence was in the nature of a case agent that the United States Attorney has a right to have in the courtroom at all times during the trial of a case.

THE COURT: Well, that's also discretionary with the Court. I exclude case agents too, until they testify and then I let them come back and sit at the counsel table. But I don't see where there has been any prejudice here and no request was made of the Court to exclude him.

Q Mr. Maher, in connection with this case of Ronald Jenkins, in February of 1971 was your office contacted by Local Board No. 50?

[66] A Yes, they were.

Q Can you tell the Court what that contact involved, in other words, what information they wanted?

A The local boards throughout the City were advised by New York City headquarters that any time a post-induction claim for conscientious objection was made, that our office was to be advised for whatever instruction might then follow.

Q In connection with the Jenkins' case, the local board contacted your office in accordance with those instructions?

A That is correct.

Q Did the local board advise you that the defendant was claiming that he was a conscientious objector?

A That is correct.

Q This was after he had received his induction notice?

A That is correct.

Q What were your instructions to the local board concerning this defendant?

A Not to postpone the induction. I derived authority from the New York City director to exercise his authority with regard to these type case questions.

Q Was this fact communicated to Mr. Carroll, [67] who is the attorney for Mr. Jenkins?

A I recall at some time, either in February or March, Mr. Carroll had contacted me and I advised him that we were not postponing the induction and that the induction order remains outstanding.

MR. WARBURGH: I have no other questions, your Honor.

THE COURT: Mr. Carroll, you may inquire.

### CROSS EXAMINATION

BY MR. CARROLL:

Q Mr. Maher, referring your attention to the report of information form filed on February 23, 1971, could you read that form to yourself or if you have already read it, you don't have to.

A Yes.

Q Is that a fair and accurate record of what occurred on that date?

A I believe it is, yes.

Q From your own personal recollection, do you recall anything else that transpired on that date?

A I recall receiving a telephone call from you.

Q Now referring yourself to what occurred when you spoke to the agents of the local board, do you recall anything else that occurred with regard to that?

[68] A With regard to—

Q With regard to your conversation with Mrs. Broadhurst who was speaking to Mrs. Montana, the clerical assistant in the local board.

A I don't recall giving any further advice or instructions to the local board other than there would be no postponement of induction.

Q Did you in fact give that order that there would be no postponement of Mr. Jenkins' induction?

A Yes.

Q Did you confer with the New York City Selective Service headquarters, director, Mr. Paul Akst?

A Yes, I had on this matter and similar matters.

Q Was it in fact Mr. Akst who gave the direction not to postpone the induction?

A It was his authority that I was exercising with his permission, his authority.

THE COURT: I assume you have that authority without calling him on every case?

THE WITNESS: That's correct.

THE COURT: You did not call him specifically on this case?

THE WITNESS: I might have brought this specific case to his attention.

[69] THE COURT: But you nevertheless had overall authority to exercise in your position?

THE WITNESS: Yes, your Honor.

Q Had similar cases in which an individual had claimed to be a conscientious objector after receipt of an induction notice but before the date of induction come to your attention?

A All post-induction claims for C.O. had come to my attention.

Q What was the usual procedure when you received notice of post-induction C.O. claims?

A To consider whether or not to grant the postponement of the induction, if it was necessary, if a postponement of the induction was necessary.

Q What type of considerations entered into your determination as to whether to postpone the induction or not?

MR. WARBURGH: I am going to object to this question. I don't think it's relevant.

THE COURT: I know. He knows. He's been doing it.



A Well, considerations were, of course, that if an induction order was postponed and somebody else was going to be called in this fellow's place, and bearing in mind the [70] Second Circuit's decisions in these cases of post-induction claims, that if the postponement of the induction was denied and the registrant had failed to report for induction, the local board could still consider the claim. They weren't precluded from considering the claim. In some cases, postponements were granted and in some cases they were not.

The reasons why some were not granted and some were granted—I can go into it if you wish.

MR. CARROLL: I am interested in the particular case here.

[71] Q Why was Mr. Jenkins' request for postponement not granted?

A Well, we had received—as I recall, we had received a call from the local board on February 23, 1971, on the eve of the induction, and we had asked the clerk to have the registrant make a statement with regard to his claim and if the statement on its face would require or set forth a prima facie claim for conscientious objection appeared that way, we would grant a postponement. However, we still bore in mind that even if we had not granted a postponement, the local board was not going to be precluded from reviewing the matter.

Q Was the fact that the local board was not precluded from reviewing the matter brought to the attention of Mrs. Montana in your conversation with her?

A Thereafter, as you know, they were precluded by the Supreme Court and the other decisions.

MR. CARROLL: We can take judicial notice of the Ellert case was rendered on April 21, of 1971 after all of the transactions.

THE COURT: Let's get into that when it comes time to discuss the law in the case because there are several cases that are very important after that, too.

[72] Q Did you receive any other correspondence from Mr. Jenkins with respect to his C.O. claim?

A Did I receive any other correspondence?

Q Yes.

A I don't recall.

Q I'm referring your attention to the letter dated March 4, 1971.

A Yes.

Q I don't think I got an answer to that question.

What was the reason that Mr. Jenkins' postponement was denied?

A Because out of consideration for those people who would be called in his place, we didn't feel a postponement of his induction was warranted.

Q But you stated that you had postponed other individuals from induction who had made post-induction C.O. claims.

A Yes. When they made a statement that on its face appeared to warrant a postponement.

Q What was it on the face of Mr. Jenkins' statement that you felt did not warrant a postponement of his induction?

A It appeared on its face that he was opposed to a [73] particular war.

Q Did you receive a letter from Mr. Jenkins which I just referred to which is dated March 3, 1971?

A I don't recall receiving it, but I may have.

Q Well, could you read the first paragraph of that letter?

THE COURT: Is it in Exhibit 1?

MR. CARROLL: Yes.

A The CO150 form—it's dated March 3, 1971 and it reads:

"The CO150 form which I have requested is on the grounds that I am morally opposed to all wars and on these moral grounds I could not take part in any effort which would or could possibly in any way help to perpetuate any war. I would also like to inform you that I am now in the process of completing CO form—"

I am sorry. This is the second paragraph.

Q Right. I just want you to read the first one.

A All right, I read the first one.

MR. CARROLL: I had no objection to it.

THE COURT: That was dated when?

THE WITNESS: March 3, 1971.

THE COURT: That was subsequent to the time that you had given the order not to postpone. That was February 23rd, if I recall?

[74] THE WITNESS: That is correct.

Q Did you take any action pursuant to that letter?

A Yes.

Q What action did you take pursuant to the letter?

A As I recall, the letter was brought about by a conversation had between yourself and myself. I think I made mention to you at that time why we were not postponing the induction, the response to that letter was received. The action we took then was to call in the file to New York City headquarters, and I advised you that the matter would not be reported to the U.S. Attorney until the case was reviewed, and that thereafter New York City headquarters could take action if we determined that the matter, the case warranted the attention of the local board, the New York City Director could and would re-open the classification and cancel the induction order.

Q Was this case referred back to the local board No. 58?

A I think it was in August of 1971 the case was returned to the local board and we advised the local board to report the matter to the U.S. Attorney for his consideration and the State Director chose not to cancel the induction order or to re-open and have the local board consider the matter.

MR. CARROLL: All right, I have no further [75] questions.

MR. WARBURGH: Just one question on redirect.

#### REDIRECT EXAMINATION

BY MR. WARBURGH:

Q Mr. Maher, if Mr. Jenkins had submitted to induction and had been inducted, would the Army have considered his conscientious objector claim?

A If he made his claim to the Armed Forces at that time, they would have considered his claim.

MR. CARROLL: Excuse me, I will have to object to that.

MR. WARBURGH: No further questions.

THE COURT: Is that the normal procedure?

THE WITNESS: Yes, sir.

THE COURT: In other words, every claim is reviewed.

THE WITNESS: That is correct, your Honor.

THE COURT: And the 150 form was reviewed when?

THE WITNESS: In March of '71.

THE COURT: Subsequent to the date that he was supposed to be inducted?

THE WITNESS: That is correct.

THE COURT: When papers are sent in after [76] a person is inducted, do they go on to where he has been sent?

THE WITNESS: No, your Honor. It would be up to him to make his claim within the Armed Forces. If I may add, your Honor—and of course you are free to object to this—had the local board at that time in February, March of '71 passed on the merits of the claim of conscientious objection, then, as I recall the Army regulations at the time, they would have to have taken into consideration that this claim was already determined by Selective Service, if they had denied the claim.

THE COURT: That was the situation here.

THE WITNESS: That was the situation in, as I recall, February of '71, March of '71.

THE COURT: All right, you may step down.

(Witness excused.)

THE COURT: Anybody else, Mr. Warburgh?

MR. WARBURGH: No, your Honor. The Government rests.

THE COURT: We will go out to lunch and come back.

MR. CARROLL: Fine. I just want to state [76a] at this time I made a motion for judgment of acquittal, but I would like to reserve that until the close of my case.

THE COURT: First thing after lunch I was going to ask you if you had any motions. So you can repeat that, then. Be back at 2:00 o'clock.

(A luncheon recess was taken.)

[77] AFTERNOON SESSION

(2:15 o'clock p.m.)

THE COURT: All right, the case on trial.

MR. CARROLL: Could we have a very brief recess?

THE COURT: Mr. Carroll, we have been in recess for an hour. You mean to talk to me?

MR. CARROLL: No, sir. I just have to leave the room for a few minutes.

THE COURT: Oh, I am sorry.

(A recess was taken.)

MR. WARBURGH: Your Honor, I would move to re-open the Government's case for the purpose of introducing into evidence Government's Exhibit 2 for identification.

THE COURT: Is that the blank?

MR. WARBURGH: That's the blank, yes.

THE COURT: Do you need it? It's the classification card.

MR. WARBURGH: That's the classification card which indicated appellant's rights.

THE COURT: Only for the purpose of indicating it's a similar form.

MR. CARROLL: I have no objection.

THE COURT: Government's Exhibit 2 for [78] identification received in evidence.

(So marked.)

THE COURT: Motion of Mr. Warburgh to re-open is granted. Government's Exhibit 2 for identification is received in evidence, and now do you rest again?

MR. WARBURGH: Yes, the Government rests.

THE COURT: Your turn, Mr. Carroll.

Do you want to make any motions now at the close of the prosecution?

MR. CARROLL: No. I would like to reserve my right to make motions.

THE COURT: Defendant reserves all rights for all motions ordinarily made at the close of the prosecution's case, and you may proceed with your defense.

MR. CARROLL: Initially, the first witness we are going to call is the defendant, Ronald Jenkins.

Mr. Warburg and myself stipulated to the truthfulness of Mr. Jenkins, thereby obviating the need to call three character witnesses that we had to testify in Mr. Jenkins' behalf.

I would like to call at this time Mr. Jenkins.

[79] MR. WARBURGH: So the record will indicate; the Government will stipulate to the defendant's good character.

THE COURT: All right. Did you have particular witnesses that you were going to bring in?

MR. CARROLL: Yes.

THE COURT: Why don't you bring in those you had intended to call, X, Y, Z, as character witnesses and to obviate the necessity of their personal appearance, the Government has conceded that, should they be called, they would testify as to his character, relative character traits.

MR. CARROLL: We had three character witnesses, your Honor: Reverend Andre Dizz, who is the Pastor of the Cuyler Warren Church.

We also had Captain Theodore Williams, who is an ex-Marine, who is presently working at the Morgan Guaranty Trust Bank in New York, and Mr. Edwin Lawrence, who is a retired fireman, who is also a member of the New York City Metropolitan Committee on Conscientious Objectors.

These three witnesses would have testified as to Mr. Jenkins' truth and veracity in the [80] community.

THE COURT: Is that correct?

MR. WARBURGH: Your Honor, the Government—

THE COURT: They would have testified to that?

MR. WARBURGH: I assume they would have testified to that.

THE COURT: That's what he says. That, of course, I understand, is agreed to by you without necessarily agreeing as to whether or not those are going to be binding upon any decision in this case.

MR. WARBURGH: That's right.

THE COURT: In other words, they will be received like we do in any ordinary trial, as character witnesses, which witnesses will be accepted—like their testimony will be accepted like all testimony and considered evidence in the case, right?

MR. WARBURGH: Yes, your Honor.

THE COURT: So long as we understand each other. Off the record.

(Discussion off the record.)

[81] MR. CARROLL: The defense calls as its first witness the defendant Ronald Jenkins.

THE COURT: Come forward, Mr. Jenkins.

RONALD JENKINS, called as a witness in his own behalf, after having been first duly sworn by the Clerk, testified as follows:

THE CLERK: State your name for the Court Reporter and your address.

THE WITNESS: Ronald Jenkins, 107 Van Brunt St. Brooklyn, New York.

THE COURT: Before he testifies may I talk to you, Mr. Carroll, and you, Mr. Warburgh?

This doesn't have to be on the record.

(Discussion off the record.)

(A recess was taken.)

MR. CARROLL: We are going forward.

THE COURT: All right, come forward, both of you.

May the record indicate that the reason for the delay was my desire to call up the attorney for the defendant to again discuss this case with his client from the point of view of possibly trying to dispose of it, which is not my practice to get involved in any kind of bargaining,



but I [82] felt that in view of the law that surrounds this type of a case, I thought that Mr. Carroll ought to again talk to his client. He advised me that he had already previously to then talked to his client and his client insisted on trying this case, and now I understand that he still wishes to go forward, right?

MR. CARROLL: Yes, sir.

THE COURT: All right. So let's go, so long as we understand.

THE CLERK: Will you take the stand, please?

THE COURT: You may proceed, Mr. Carroll.

### DIRECT EXAMINATION

BY MR. CARROLL:

Q Mr. Jenkins, what is your occupation, for the record?

A I am a postal employee.

Q Where are you working?

A At Peck Slip Station.

Q Do you have any prior convictions?

A No, I don't.

Q Now directing your attention to in or about September 1966 did you have the occasion to go to Local Board No. 50?

[83] Q What did you do at that time?

A I registered.

MR. CARROLL: This is a copy of Government's Exhibit 1, the classification questionnaire.

Q I direct your attention to Series No. 8 which states: "I claim to be a conscientious objector by reason of my religious training and belief and, therefore, request the local board to furnish me a special form for conscientious objector, SSS form No. 150," and I ask you whether you signed that form?

A No, I did not.

THE COURT: What you read, was that in Mr. Jenkins' handwriting?

MR. CARROLL: Yes.



Q Is this a true and accurate representation of the classification questionnaire that you filled out in September of 1966?

A Yes, it is.

Q And this is your handwriting?

A Yes.

THE COURT: You said you did not sign it?

THE WITNESS: No, I didn't.

May I say something?

Q If you want to say something in response to the [84] question—

THE COURT: I don't know if it's in response to the question, but maybe you can go to him, talk to him. I don't mind if you talk to him.

Off the record.

(Discussion off the record.)

Q Directing your attention to February of 1971, did you receive an order to report for induction?

A Yes.

Q Did you do anything in response to that order to report for induction?

A I requested Form 150.

MR. WARBURGH: I am sorry. I didn't hear the answer.

THE COURT: Yes, you have to speak a little louder, Mr. Jenkins.

Did you receive an order for induction?

THE WITNESS: Yes, I did.

THE COURT: Then your next question was?

MR. CARROLL: Did you do anything in response to that order to report for induction?

THE WITNESS: I requested a Form 150.

Q Before you requested a Form 150, but after you received the induction order, did you do anything else in [85] response to the receipt of that induction order?

A I asked for a postponement of the induction order.

Q Was that on your own volition or had you spoken to somebody about that?

A About the postponement?

Q Yes.

A Yes, I had.

THE COURT: Yes, you had what?

THE WITNESS: Spoken to someone about postponement.

Q Did you ever speak to Mr. Jerome Bibuld?

A Yes.

Q You spoke to him about your induction order?

A Yes.

Q Was this pursuant to the induction order that you spoke to Mr. Bibuld?

A Yes, it was.

THE COURT: Who is this Mr. Bibuld?

Q Could you please identify Mr. Jerome Bibuld?

A He is draft counselor, he works in Bedford-Stuyvesant.

THE COURT: Not in your local board?

THE WITNESS: No.

THE COURT: This is a local community office that helps on draft matters?

[86] THE WITNESS: Yes.

THE COURT: Not an official body?

THE WITNESS: Not of Selective Service.

Q When did you see him?

A In February.

Q This was after you received the induction order?

A Yes, it was.

Q Could you please tell us what transpired when you saw Mr. Bibuld?

A Well, we did, you know, the usual questions, information that I related to the induction order and during the course of our discussion the matter of conscientious objection, you know, was brought to my attention. Prior to that time I wasn't aware of the definition for conscientious objection nor of my rights under the Selective Service laws.

Q Prior to speaking to Mr. Bibuld had you identified yourself as being opposed to war in all forms?

A Not clearly, you know, but we did talk about certain things, you know, certain things were brought out and when—after which time when informed about the

definition of a conscientious objector, I felt that I fitted that definition, so I applied.

THE COURT: When was that conversation with [87] Mr. Bibuld?

THE WITNESS: This was in February, about February—

THE COURT: When did you receive your notice to report for induction? Also in February, wasn't it?

THE WITNESS: February 5th, something like that.

THE COURT: Did you go to the Board to inquire there about your notice of induction?

THE WITNESS: I went to the Board to check my records.

THE COURT: Did you tell them at that time anything or ask them any questions?

THE WITNESS: About my induction order?

THE COURT: Yes.

THE WITNESS: No, I didn't.

THE COURT: Did you ask them at that time to postpone your induction because you were going to make a claim for CO?

THE WITNESS: At or about that time I asked for Form 150.

THE COURT: When did you ask for the Form 150, before you spoke to Mr. Bibuld or after?

[88] THE WITNESS: After.

THE COURT: Well, I am trying to find out if you did anything along those lines before you spoke to Mr. Bibuld.

THE WITNESS: I was unaware of the conscientious objector classification before that time.

MR. CARROLL: I am going to refer Mr. Jenkins to certain documents that might help him refresh his recollection.

BY MR. CARROLL:

Q I refer you to United States Government memorandum filed on February 9, 1971, and I ask you whether this is your handwriting?

A Yes, it is.

Q Could you please tell the Court what the nature of this memorandum is by reading subject?

A "Review of Complete Selective Service Records."

Q I refer you to a current information questionnaire that was filed on February 9—

THE COURT: Before we pass the other one up, I would like to know more about it. Just a heading Review of Records means nothing to me.

Q Could you please explain to the Court what you [89] did—

THE COURT: What does it say on there? It's in evidence, you say?

MR. CARROLL: No. This is all that it says, "Review of Selective Service Records."

THE COURT: May I see it?

(Document handed to Court.)

THE COURT: Mr. Jenkins, is this part of Government's Exhibit 1?

MR. CARROLL: Yes, that's a copy.

THE COURT: This was written by you on February 9?

MR. CARROLL: Yes.

THE COURT: Where, at the Board?

MR. CARROLL: Yes.

THE COURT: Tell me what prompted you at the Board to write this?

Were you talking to someone at the Board and they told you to write this out or something?

THE WITNESS: I asked to see my file, to review it, and in order for me to see it they had to have that in writing.

THE COURT: Did you tell them why you wanted to see it?

[90] THE WITNESS: I believe so. I am not certain.

THE COURT: Do you know what you told them?

THE WITNESS: Just that I wanted to review my file.

THE COURT: Is that because you had received an induction notice?

THE WITNESS: No, it wasn't.

THE COURT: You had already received the induction notice?

THE WITNESS: Yes, I had.

THE COURT: Then tell me why you wanted to see the file.

THE WITNESS: I had not received a classification card as to being put in Class 1-A prior to or after my induction notice. So that was the reason.

THE COURT: That was the reason for it?

THE WITNESS: Yes.

BY MR. CARROLL:

Q Mr. Jenkins, I refer you to a copy of a letter which is in Government Exhibit 1 which is dated February 17, 1971 and I ask you whether this is a true copy of the letter that you wrote to the local board.

A Yes, it is.

[91] Q Could you please read this letter to the Court.

A "In relation to an induction order into the Armed Forces of the United States scheduled for February 24, 1971, I would like to request a CO Form 150."

THE COURT: What's the date of that letter?

MR. CARROLL: This letter is dated February 17 of 1971.

Q Did you receive any reply from the local board to that letter?

A No, I didn't.

Q Did you have any further contacts with the local board after writing that letter February 17, 1971?

A Yes, I did.

Q Now I show you a report of information form, a copy of a report of information form which is part of Government Exhibit 1 and I ask you to read that to yourself and tell me whether that's a true and accurate representation of what occurred on February 23 of 1971?

Do you recall those events?

A Some of them.

Q Would you like to add to those events in any way?

A No.

Q Did you receive a form 150 on that date?

A Yes, I did.

[92] Q Did you complete that form 150?

A Yes, it was completed.

Q On February 24 of 1971 did you go to the AFES station?

A No.

Q Is there any reason that you didn't go to the AFES station on that day?

A At that time I was in the process of completing my 150 form, which I had thirty days at face value on the form—it said that I had thirty days to complete it, so I was in the process of filling it out, and my conscientious objector claim had not been considered.

Q Are you referring to the statement at the top of the SSS Form 150 which states: "Complete and return within thirty days"?

A Yes.

Q Did you hear anything from the local board about the consideration of your conscientious objector claim?

A No.

Q Did you in fact receive a denial from the local board of your conscientious objector claim?

Did you receive any communication from them either affirmatively or negatively?

A I don't believe I received anything from them.

[93] THE COURT: You say that you took that form at face value and said because you can fill it out and send it in in thirty days, that anything else within that thirty days you didn't have to do?

THE WITNESS: No. I couldn't understand how my claim could have been considered, and at the same time accept induction.

THE COURT: But you don't know what the results of the consideration of that claim would have been at that time?

THE WITNESS: No, I don't.

THE COURT: In other words, you didn't go to the Board and say, "Look, I just got that form, I got thirty days to fill it out and I'm not going in because I want an extension until I get that filled out, or something like that"?

Did you tell them that? You just ignored the induction notice, right?

THE WITNESS: (No response.)

MR. CARROLL: I have to object to the form of that question. I think that's a conclusion.

THE COURT: I will ask it in a different form.

THE WITNESS: I didn't ignore it.

[94] THE COURT: Your lawyer objected to it so don't answer it. I want to ask it in a different form.

You received Form 150 and you took at face value the fact that you had thirty days within which to fill it out. At the same time you knew that your induction notice was for a date prior to that thirty-day period, right?

THE WITNESS: Yes.

THE COURT: Did you say "Yes"?

THE WITNESS: Yes.

Q Now, knowing that, did you go to the Board and say, "Extend my time to give me a chance to fill out this 150 form"?

THE WITNESS: I did that in asking for the postponement.

THE COURT: What did they do?

When did you do that?

THE WITNESS: I asked for the postponement before the date of induction.

THE COURT: I'm not talking about that. You had gotten an induction notice and you say after that you went there and got a 150 form, right?

[95] THE WITNESS: Yes.

THE COURT: In other words, you got the 150 form to fill out after you had been notified that you were going to be inducted?

THE WITNESS: Yes.

THE COURT: That's what I am talking about.

Now, between that time when you got the induction notice and the time when you were to appear for induction, did you do anything at all, did you get that 150 form in even though you had thirty days?

You didn't do that, did you?

THE WITNESS: I did get the 150 form in.

THE COURT: When, after the induction date?

THE WITNESS: Are you saying that I should have—

THE COURT: I am not saying what you should have done. I am just trying to find out what you did.

In other words, the induction notice which you received said that you must appear for induction on what day?

THE WITNESS: On the 24th.

THE COURT: On February 23rd or 24th, whatever [96] it was. Let's say 24th. You received that on when?

THE WITNESS: February 23rd.

THE COURT: You got it the day before?

THE WITNESS: Yes, I did.

THE COURT: In other words, you say you got the notice to appear for induction on the 23rd to appear on the 24th, the next day?

THE WITNESS: I got the form on the 23rd.

MR. CARROLL: Referring to the form 150 form.

THE COURT: The 150 form?

THE WITNESS: Right.

THE COURT: When did you receive your notice to appear for induction on the 24th?

THE WITNESS: The 5th of February.

THE COURT: In other words, from the 5th of February to the day that you went for the 150 form on February 23rd you did nothing about that induction notice?

THE WITNESS: No.

MR. CARROLL: Excuse me. I object to that.

THE COURT: Why?

MR. CARROLL: Because the letter was sent [97] out—a letter was sent out to the local board on February 17, 1971.

THE COURT: Requesting a 150 form.

MR. CARROLL: Requesting a 150 form.

THE COURT: All right, that was after he had received the notice, right?

MR. CARROLL: That's correct.

THE COURT: So that on the 23rd you went down for the form yourself; is that what you did?



THE WITNESS: Yes.

THE COURT: But you had asked for it by this letter of February 17?

THE WITNESS: Yes.

THE COURT: When you got the form on the 23rd then what did you do about asking for a postponement?

THE WITNESS: I believe I contacted Mr. Carroll and I believe he contacted Major Maher.

BY MR. CARROLL:

Q Directing your attention to a letter which is dated February 23, 1971, is this a true and accurate copy of a letter that you submitted to the local board on that date?

A Yes.

Q This is in your handwriting?

[98] A Yes.

Q Could you please read that letter?

A "I am requesting a CO 150 form on the grounds that I am morally opposed to the present war and on these moral grounds I don't feel that I could take part in any effort which would or could in any way perpetuate this war."

Q Pursuant to whose request, if any, did you write that document?

A To the request of the Executive Secretary, Miss Elaine Morris, who I spoke to at that time.

THE COURT: That was on the 23rd.

MR. CARROLL: That was on the 23rd.

Q Is your objection in fact limited to the present war?

A No.

MR. WARBURGH: I am going to object to that.

THE COURT: Yes. The paper speaks for itself.

Did you tell the Executive Secretary, when you went down there and signed that requesting the 150 form, that you had written a letter to her on the 17th and you had not received anything from her?

THE WITNESS: Yes.

[99] THE COURT: What did she say to that?

**THE WITNESS:** She said that I have to sit down and write this out in order to get the form.

**THE COURT:** All right.

**Q** This letter has already been sufficiently discussed, but is this a true and accurate representation of a letter that you wrote on March 3, 1971?

**A** Yes, it is.

**MR. CARROLL:** That letter, your Honor, is the letter the registrant wrote which states that "The CO 150 form which I have requested is on the grounds that I am morally opposed to all wars and on these moral grounds I could not take part in any effort which would or could possibly in any way help to perpetuate any wars."

**THE COURT:** That was written what date?

**MR. CARROLL:** That was on March 3, 1971.

**THE COURT:** After the one that you read previously.

**MR. CARROLL:** That's correct. That was after the date of induction.

**Q** Referring your attention to the special form for conscientious objectors, form 150, which is part of the records, Series 1, could you state whether you signed Part A [100] or Part B of that series?

**A** Part B.

**Q** In signing Part B of that series, what was your understanding?

**A** That I would perform civilian service.

**Q** Did you answer the other questions on the Form 150 in full?

**A** Yes, I did.

**MR. WARBURGH:** I am going to object to this line of questioning. I think the form speaks for itself. It's in evidence.

**MR. CARROLL:** I just wanted to bring this to the Court's attention.

**THE COURT:** That's all right. I will allow it.

We permitted Miss Morris to read from letters on the same basis.

**Q** Now Mr. Jenkins, going back to the classification questionnaire that you filed out in September of 1966,

in answer to Series 11, physical condition, Section 2, where it's stated: "If you have any physical or mental condition which in your opinion will disqualify you for service in the Armed Forces, state the condition and attach a physician's statement," could you tell the Court how you answered that particular question?

[101] A "Hip operation."

Q Also Mr. Jenkins, referring your attention to Form No. 56 that was mailed from the local board to you, I will ask you whether you received a copy of that letter.

A Yes.

Q Do you understand what this letter says?

A Yes.

Q Now did you take any action pursuant to this letter which states, "Dear Sir: Because of certain physical defects claimed by you it is important that you submit to this local board any medical evidence you have concerning these defects which will aid the Armed Forces Examining Station in determining your physical status"? Did you take any action pursuant to that?

A I contacted my mother and asked her to comply with the letter for me.

Q Referring your attention to a form 127, current information questionnaire, which was received by the local board on October 23rd of 1967, in response to Series A did you respond to that in any way, subsection 2, asking if you have any physical ~~or~~ mental condition which in your opinion would disqualify you from service in the Armed Forces, state the condition and attach a physician's statement if not previously submitted?

[102] A No, I didn't.

Q Is there any reason why you didn't fill out that particular section?

A I can't remember exactly what it was.

Q Referring your attention to current information questionnaire, Form 127, received by the local board on February 17 of 1969, and referring your attention to Series 7, subsection 2, which states as the previous question, did you respond to that in any manner?

A Yes, I did.

Q What did you say?

A "Hip pelvis operation."

Q Again, Mr. Jenkins, referring your attention to current information questionnaire filled out, returned to the local board by March 5th of 1970, in response to the Series 7, Subsection 2, did you state anything?

A "Hip pelvis operation."

Q Now Mr. Jenkins, did you receive in or around January of 1971 a Form No. 223 order to report for Armed Forces physical examination for January 20, 1971?

A Yes.

Q Did you in fact go to the AFES station on January 20, 1971?

A Yes.

[103] Q Was there any examination by the doctors at the AFES station performed upon you at that time?

A Yes.

Q Now could you please state for the benefit of the Court the examination that was given to your hip at that time?

A The examination—

MR. WARBURGH: I object to this as not being relevant to the issues on trial.

THE COURT: I am going to allow it. There is no jury here, so let me hear what he's got to say.

This is now his own description.

MR. CARROLL: Yes.

THE COURT: Of course, it's coming from one who doesn't know medical terms or anything like that.

MR. CARROLL: Yes. But just from his own personal observations.

THE COURT: The question of relevancy, of course, is still uppermost in my mind.

But go ahead.

A The examination took about two minutes. The doctor looked at the scar.

[104] THE COURT: Your clothes were off?

THE WITNESS: Yes.

THE COURT: And he looked at the scar?

THE WITNESS: He looked at the scar on my hip, my left hip, asked me to run down a corridor and back and that was the extent of the examination.

THE COURT: Did any doctor put his hand on your hip to feel it?

THE WITNESS: No.

THE COURT: Nobody touched your hip?

THE WITNESS: Just looked at it.

THE COURT: Just looked at it?

THE WITNESS: Yes.

THE COURT: Before asking you to run?

THE WITNESS: Yes.

THE COURT: You don't know what he was looking at; you say he looked at your scar?

THE WITNESS: He looked at the scar on my hip.

THE COURT: He looked at your hip, too?

THE WITNESS: Yes.

THE COURT: Had you submitted any records at that time with regard to your hospitalization?

THE WITNESS: No, I didn't, aside from the [105] letter that my mother wrote.

Q During that examination did you inform them at any time about your hip?

A Yes.

Q In what manner did you inform them about your hip?

A On a form that I had to fill out before the actual examination, also during the examination when I got to see the doctor and at the end of the examination.

MR. CARROLL: I have no further questions.

[106] THE COURT: Mr. Warburgh, your witness.

### CROSS-EXAMINATION

BY MR. WARBURGH:

Q Mr. Jenkins, in September of 1966, after you had registered with the Selective Service System, you were subsequently classified 2-S?

A Yes.

Q Is that a student deferment?

A Yes.

Q Did you receive one of these cards or a card that looked like that, Government's Exhibit 2 in evidence?

MR. CARROLL: Will you please identify that card?

MR. WARBURGH: Government's Exhibit 2 in evidence.

THE COURT: That's the blank form.

Q Did you receive a card that looked like that with your classification on it?

A Yes, I did.

Q Did you read the card when you received it?

A I don't believe I did.

Q You didn't read the card?

A Except for the classification I had.

Q Well, would you read this portion of the card now?  
[107] Read it out loud.

A "The law requires you to have this notice in addition to your registration certificate in your personal possession at all at all times and to surrender it upon entering active duty in the Armed Forces. The law requires you to notify your local board in writing within ten days after it occurs of every change in your address, physical condition and occupation, including student, marital, family dependency and military status and of any other fact which might change your classification.

"Any person who alters, forges, knowingly destroys, knowingly mutilates or in any manner changes this certificate or who for the purpose of false identification or representation has in his possession a certificate of another, or who delivers his certificate to another to be used for such purpose may be fined not to exceed \$10,000 or imprisoned for not more than five years, or both."

Q Now, at the time that you registered with the Selective Service System in September of 1966, did you receive a registration card, your draft card, did you receive it?

A Yes.

Q Do you have it with you now?

A No, I don't.

Q After you were classified 2-S in 1966 you were  
[108] then classified 2-S in 1967; is that right, and



you received another card similar to this one with your classification on it?

A Yes, I did.

Q You received four of those classifications in class 2-S; is that right?

A Yes.

Q On each of those occasions you received a card like this with your classification on it?

A Yes.

Q Would you tell the Court when you left school?

A In May 1970.

Q Did you graduate from school at that time?

A No, I didn't.

Q During the time that you were at school you had told the local board that your address was your local address at school; is that right?

A Yes.

Q In May of 1970 you left school?

A And I also went back in September.

Q Of 1970?

A Yes. But I was not a student then. I was in the City of Greensboro at that time.

Q Did you inform the local board that you were [109] no longer a student?

A I had not made the final decision to leave school completely.

Q Just answer my question: Did you inform the local board?

A No, I did not. I was still a student—

Q No. Just answer my question.

Where did you live at Greensboro at that time?

A At the time I went back?

Q Pardon me?

A When?

Q In 1970.

A 101 South Davis St.

Q Did you subsequently return to New York?

A When?

Q Some time after that.

A Yes.

Q What date did you return to New York?

A After the semester was over; it was in May some time.

Q May of 1970?

A 1970.

Q Did you tell the local board what your address was in New York at that time?

MR. CARROLL: Objection. I object on the [110] grounds that this isn't an issue in the case.

MR. WARBURGH: Your Honor, there was some issue raised during direct examination as to the fact that he never received his A-1 classification card.

THE COURT: That's right. He so testified. I will allow it.

A I wasn't aware—

Q No. My question was, did you inform the local board of your New York address?

A Yes. The local board knew my New York address, 107 Van Brunt St., Brooklyn.

Q Then your testimony is that you went back to North Carolina in the fall of 1970?

A Yes, I did.

Q And that was not in the capacity of a student; is that right, you were not a student at that time?

A No, I was not enrolled at that time.

Q After the fall of 1970 did you return to New York?

A Yes, I did.

Q When did you return to New York?

A In or around about December 1970.

Q At that time did you inform the local board of [111] your new location; yes or no?

A No, I did not.

Q With respect to the events that took place in February of 1971 you received your induction notice on or about February 5, 1971?

A Yes, I did.

Q And then after that you went to the local board and asked that your induction be postponed; is that correct?

A No.

Q That's not correct?

A I wrote a letter to the board asking for a 150 form.



Q Prior to writing the letter did you go to the local board and ask that your induction be postponed?

A Prior to writing the letter or after writing the letter?

Q Prior to writing the letter.

A No.

Q On February 9, 1971, did you go to the local board on that day?

A Yes, I did.

Q At that time the local board gave you a Form 127, which is a current classification questionnaire; is that correct?

A Yes, it is.

[112] Q Did you throw that out?

A No, I didn't.

Q At that time, did you ask the local board to postpone your induction?

A No, I don't believe so.

Q When was it that you met with this draft counselor?

A Some time after I received the induction order.

Q Did you meet with him before you sent the letter requesting a Form 150?

A Yes.

Q Before you sent the letter requesting a Form 150 did you have any conversation or meetings with Mr. Carroll?

A Yes.

Q When was that?

A It was some time before or after I asked for the 150 form.

Q Before or after you asked for the 150 form?

A Yes.

Q When you went to the local board on February 23, 1971 did the local board tell you that your induction was not postponed?

A Yes.

Q Did you thereafter receive a letter telling you [113] that the induction was not postponed? (handing)

A Yes.

Q Who received that letter? Did you receive that letter on the 23rd of February?

A Yes.

Q Did Mr. Carroll tell you prior to February 24th that your induction would not be postponed?

MR. CARROLL: Objection. What I told Mr. Jenkins and what I didn't tell Mr. Jenkins is within the bounds of privilege.

THE COURT: Yes, except that Mr. Jenkins has taken the stand and he's testified to certain things, hasn't he?

MR. CARROLL: I think it's proper to testify that he had spoken to me, but as to the nature of what he spoke to me about or any conversations I think is within the bounds of privilege.

MR. WARBURGH: I will withdraw the question.

Q On February 23, 1971 you knew that your induction was not going to be postponed; is that correct?

A On February 23rd I knew, yes.

Q At the time you reported for your induction, [114] pre-induction physical examination, you told the examining doctors about this hip condition? Is that correct?

A Yes.

Q Did you also tell them that you had engaged previously in soccer activities?

A No.

Q In track activities?

A No.

Q In basketball activities?

A I never participated in basketball activities, not on no team.

Q Pardon me?

A Not on no team.

Q Have you ever played basketball?

A Yes, I have played basketball before in my life.

Q Did you play basketball while you were down at school in North Carolina?

A I was not on the basketball team.

Q I didn't ask you that. Just answer my questions.

Did you play basketball while at the school there?

A Yes.

Q On February 24, 1971 did you report for [115] induction as directed?

A No.

MR. WARBURGH: No further questions.

### REDIRECT EXAMINATION

BY MR. CARROLL:

Q Mr. Jenkins, did you ever go to any doctors with regard to your hip condition?

A No.

Q Did you ever consult with a Dr. Simons?

A Yes.

Q Did you go to Dr. Simons—

MR. WARBURGH: Could I ask when this took place?

MR. CARROLL: That was the next question.

THE WITNESS: This took place prior to my senior year in high school.

Q Did Dr. Simons examine you?

A Yes, he did.

Q How long did you see Dr. Simons about your hip condition?

A The exact amount of time I couldn't say.

Q Did Mr. Simons give you any advice as to physical activities?

A He told me—

[116] MR. WARBURGH: Objection.

THE COURT: Sustained.

Do you have any report of his?

MR. CARROLL: No, I don't.

Because this is when he was in high school.

I think, your Honor, the U.S. Attorney brought out the fact that Mr. Jenkins had played basketball and I think this is relevant to that particular question brought out on cross.

THE COURT: If you want to talk about playing, he didn't bring out anything about doctors at that time.

MR. CARROLL: It relates directly to that point.

THE COURT: While he was in high school?

When was he in high school?

MR. CARROLL: I think he stated he had seen the doctor over a period of time.

THE COURT: When was this that you were in high school?

THE WITNESS: 1963 through '66.

THE COURT: Your hip operation was back in 1949?

THE WITNESS: Yes.

[117] THE COURT: How old were you when you had your hip operation?

THE WITNESS: I was less than a year old.

BY MR. CARROLL:

Q Was there anything that prompted you to go to Dr. Simons?

MR. WARBURGH: Your Honor, I object to this, too.

THE COURT: I will see where he's going, subject to connection, anyway.

Q Was there anything that prompted you to go to Dr. Simons?

A I was having pains in my knees.

THE COURT: In your knees?

THE WITNESS: Yes.

Q Did Dr. Simons give you any advice after examining you?

A He said that—

MR. WARBURGH: I object to this.

THE COURT: Yes, what Dr. Simons said.

MR. CARROLL: All right, I have no further questions.

## RECROSS-EXAMINATION

BY MR. WARBURGH:

[118] Q With respect to Dr. Simons, did you ever ask Dr. Simons to send a report to the local board concerning your hip condition?

A I asked my mother to take care of that for me.

MR. WARBURGH: No further questions.

THE COURT: I had read earlier a roentgenologist or an X-ray doctor's report to the effect that there is

nothing wrong with the knees, if you remember, attached to the medical record.

MR. WARBURGH: It's in evidence.

THE COURT: All right, you may step down, Mr. Jenkins.

(Witness excused.)

THE COURT: Call your next witness, Mr. Carroll.  
MR. CARROLL: Mr. Bibuld.

[119] JEROME BIBULD, called as a witness on behalf of the defendant, after having been first duly sworn by the Clerk, testified as follows:

THE CLERK: State your name for the Court Reporter.

THE WITNESS: Jerome Bibuld, 607 East 12th St., New York 10009.

MR. WARBURGH: Your Honor, the Government at this time would ask for an offer of proof as to what this witness is going to testify to.

THE COURT: Yes, Mr. Carroll, would you please indicate to the Court.

MR. CARROLL: Yes. Mr. Bibuld will testify to the fact that he spoke to Mr. Jenkins after Mr. Jenkins had received his induction order on February 8th, 1971, and at that time we discussed Mr. Jenkins' case with him. The problem in Mr. Jenkins' case, as Mr. Bibuld saw it, was the fact that Mr. Jenkins had not received a 1-A classification card.

After discussing Mr. Jenkins' case with him for some time, Mr. Bibuld elicited from the registrant the fact that he was conscientiously opposed to all wars and it was only at this time [120] that Mr. Jenkins became aware of his conscientious opposition to all wars.

MR. WARBURGH: The Government would object to this testimony based on the fact that the only issue before the Court is whether there was any error in the local board's processing of this defendant since 1966.

THE COURT: Determinations had been made by the Board and the record which was elicited this morning

indicates that there were determinations made by the Board and there had been no moves afoot by anyone to overturn those determinations by the Board.

This gentleman was someone in the neighborhood who gratuitously gives advice to people who go to see him. It has no effect on the Board. It's advice that he would give and I just don't see the relevancy to the issue involved in this case.

MR. CARROLL: Yes, I understand.

THE COURT: If you can give me some—

MR. CARROLL: The relevancy here, your Honor, is the fact that the Board did not consider the registrant's CO claim, and I think the reason for that, your Honor, if I might, is that on [121] February 23rd the registrant stated, in a document that he signed, that he had moral opposition to the present war.

Now, I think the sincerity of the registrant's beliefs in opposition to all wars was in question because on March 3, 1971, when the registrant stated that in fact his opposition was to all wars, the local board took no action on this and the State Selective Service Director—New York City Headquarters' Director, rather, did not take any action on this.

So what I am trying to show is this is not a fabrication of the record after.

THE COURT: All the facts that you have stated so far the record indicates so far. So what can Mr. Bibuld testify to contrary to what you have already said or even to add to it? Do you want redundancy at the very best? In other words, whatever you have said up to now has been elicited by the letters and other papers which were part of Government's Exhibit 1.

MR. CARROLL: Well, I think the sincerity of the registrant is in issue.

THE COURT: He's not going to be able to [122] question those papers. No one questions those papers and there was a decision by the Board.

Now, he doesn't like it, you don't like it, maybe Mr. Jenkins doesn't like it. That's not relevant to the issue before me.



MR. CARROLL: But the decision of the Board is in question, and I think it goes back to the Board's—

THE COURT: No, that's exactly what I am driving at. I don't think the decision of the Board is in question here. If it is, it would be another story. It's not.

MR. CARROLL: I think that's in issue in the case.

THE COURT: In what way?

MR. CARROLL: It goes back to my motion for judgment of acquittal, that the Board was acting beyond the law at the time when they refused to postpone the registrant's induction.

THE COURT: You can argue that point now, if you want to argue that point now. That would be very apropos now in view of this offer of proof. If you feel this offer of proof will shed light on your argument that you make on your [123] motion for acquittal, do so now. I want to give you every opportunity.

MR. CARROLL: I think the case in the Second Circuit at that time stated that if an individual requested a CO form, that it was a duty and obligation of the local board to postpone the registrant's induction and to schedule a permissive interview to determine the sincerity of the registrant's belief and the only thing that was to be an issue—

THE COURT: You base that argument on Geary?

MR. CARROLL: Geary, Stafford and the other cases which follow, *Pacel v. Laird*, for example, at this time the local board violated what was standard law in the Second Circuit.

THE COURT: They made a determination?

MR. CARROLL: What I am saying is they made a determination which was in violation of the existing law.

THE COURT: But there was a determination made.

MR. CARROLL: Yes.

THE COURT: You say, now, that determination [124] was a violation of the principle laid down in Geary?

MR. CARROLL: That's correct.

THE COURT: What's happened to Geary since?

MR. CARROLL: Well, I think this is one of the issues in this case.

THE COURT: That's the crux of this point now.

MR. CARROLL: Yes.

THE COURT: Therefore, what can Mr. Bibuld add to that argument?

MR. CARROLL: Well, Mr. Bibuld—

THE COURT: It now becomes strictly a question of law as to whether Geary is still in effect. If Geary is still in effect, you don't need his testimony.

MR. CARROLL: I am not saying Geary is still in effect. I am saying it was in effect at the time that all of the transactions that the registrant had the local board took place.

THE COURT: Assuming arguendo that that is so, now tell me—let's make it a question of law because that's all it is right now.

MR. CARROLL: I don't think you can separate [125] it from the facts in the case, though.

THE COURT: How is he going to change the facts in the case with his testimony?

MR. CARROLL: He's going to amplify on the sincerity of the registrant's beliefs, which I state was tested by the local board prior to any type of permissive hearing by the local board.

THE COURT: How do you argue against that, Mr. Warburgh?

MR. WARBURGH: After Geary, of course, we have the famous case of Ellert.

THE COURT: I am not going to that yet.

Mr. Carroll poses an argument now, if you wish to repeat it.

MR. WARBURGH: If I understand Mr. Carroll correctly, this witness would testify as to the sincerity of the defendant's beliefs, which is not in issue before the Court here.

THE COURT: Which is not in issue. It would have been an issue before the local board if the local board had determined to hear the issue, correct.

MR. WARBURGH: Right, and made a decision based on the merits.

[126] THE COURT: That's why I asked Mr. Carroll initially. They had already made a determination and



they decided not to review that determination. Now anything Mr. Bibuld would add—and I am not questioning anything he would say—would only support your argument, if you want to use it that way, that the Board should have re-opened at that time.

MR. CARROLL: Yes.

THE COURT: He hadn't discussed anything with the Board at that time, had he, this gentleman?

MR. CARROLL: Yes, he did, as a matter of fact.

THE COURT: That's the point.

MR. WARBURGH: In any event, the local board declined to consider the CO claim at that point.

THE COURT: On the ground that they had determined it.

MR. WARBURGH: Well, they had not determined it. They just declined to consider it based on the direction of the New York City Headquarters.

[127] THE COURT: Because his draft notice had been issued and he was told to report by a certain day.

MR. WARBURGH: That's correct.

THE COURT: And that this application for 150 form was received after the notice of classification was sent out. Is that the basis of your argument?

MR. WARBURGH: This 150 request was made after the pre-induction order was sent out.

THE COURT: That's what I said. I said classification. I meant pre-induction order.

That's the whole case here anyway.

MR. CARROLL: I know that.

THE COURT: What do we need this testimony for? That's the argument now. Did they have the right to close off then and not consider it? That to me is a question of law here, not further proof.

MR. CARROLL: I object to that. I except to that.

THE COURT: I will deny the offer of proof, if that offer of proof is directed in that area of adding testimony which would have, say, built [128] up his claim which had been by the Board denied to be reviewed.

All right, that's out. Denied.

MR. CARROLL: Are you asking him to step down?

**THE COURT:** If that's what you want to bring out through this witness, I am denying your right. In other words, you made an offer of proof. I am denying you that offer of proof.

Is there anything else he can talk about?

**MR. CARROLL:** Well, that's all.

**THE COURT:** You may step down.

(Witness excused.)

**MR. CARROLL:** Mrs. Bates is the mother of the registrant-defendant in this case and she will testify to the fact that in response to the, I think it was, telephone call that the registrant made to her in response to the form 56 requesting additional information, that she wrote the letter and that she had expected a response from the local board to the letter that she had written.

[129] **MR. WARBURGH:** That's not in issue here, either.

**THE COURT:** If that's what she wants to testify to, that testimony has come up, if you want to repeat it, it's okay with me, repeat it through her. I will ask her as I asked the lady, Miss Morris—I asked her if there was anything in that letter which asked for a reply, and Miss Morris said no. I would have to ask her the same way.

If you want to put her on, you may.

**MR. CARROLL:** Yes. That's all I am going to ask her.

**MR. WARBURGH:** Just for a limited purpose.

**THE COURT:** To the effect that she wrote this letter in response to a request by, I am sure, Mr. Jenkins called his mother and told her to write it. I will let her testify to that. We have had testimony with regard to it, so there is no reason why he can't bring it out in his defense.

**MR. WARBURGH:** Will she testify to anything else?

**MR. CARROLL:** No.

[130] **THE COURT:** We will find out. I don't think you need to divulge everything she has to say.

Do you want Mr. Bibuld to remain?

MR. CARROLL: No, unless the U.S. Attorney wants him to remain.

THE COURT: You are excused. You may stay here. The courtroom is public. I am just excusing you from further participation.

PHYLLIS BATES, called as a witness on behalf of the defendant, after having been first duly sworn by the Clerk, testified as follows:

THE CLERK: Will you state your name and address, please.

THE WITNESS: Phyllis Bates, 107 Van Brunt Street, Brooklyn.

#### DIRECT EXAMINATION

BY MR. CARROLL:

Q Mrs. Bates, I am going to refer your attention to a letter written on October 4th of 1966 received by the local board on October 5, 1966, which is a copy of one of the exhibits in Government's Exhibit 1, and I would ask you to just read this letter, if you don't remember the contents.

[131] Have you read the letter?

A Yes.

Q Was that letter written by you?

A Yes.

Q Was that letter written by you in response to any communication that you had with your son, Ronald Jenkins?

A Yes.

Q Could you for the benefit of the Court tell the reason that you wrote that letter?

A Well, he was away at school and he needed a medical for Selective Service which he couldn't get because he was in Greensboro. So I wrote to Selective Service and I also sent them his medical card and his doctor's name so they could get in touch with the medical center and his doctor also, and I also specified in the letter that if this wasn't sufficient, to let me know.

Q Did you receive any response from the local board?

A No. They only sent the clinic card back and that was all.

MR. CARROLL: No further questions.

THE COURT: They sent the clinic card back?

THE WITNESS: Right.

[132]

### CROSS-EXAMINATION

BY MR. WARBURGH:

Q Referring to the letter, the last sentence on the first page: "I will also write to the medical center," is that what it says there?

A Right.

Q And the last part of the letter says, "Any other information that you need that will have to be gotten from Brooklyn or Manhattan," right?

A Right.

MR. WARBURGH: I have no other questions.

MR. CARROLL: I have no further questions.

THE COURT: May I ask Mrs. Bates how old was Ronald when he injured his hip? Did he injure his hip or was it some other—

THE WITNESS: The doctor didn't even know. They said when he was a baby he must have fell on a sharp instrument and he had an emergency operation 7:00 o'clock at night. He pretty near—

THE COURT: When was that?

THE WITNESS: 1949.

THE COURT: In other words, the doctor thought he might have fallen on something sharp?

THE WITNESS: Right.

[133] THE COURT: How long was he in the hospital?

THE WITNESS: Ten weeks.

THE COURT: After that?

THE WITNESS: He had to wear a brace.

THE COURT: Where was that? What hospital?

THE WITNESS: It was a hospital on 59th St.

THE COURT: Is that the Presbyterian Hospital?

THE WITNESS: They moved from that hospital to Medical Center, but he was operated on 59th St. I forget the name of the hospital. He had to wear a brace.

THE COURT: That was in 1949?

THE WITNESS: Yes.

THE COURT: All right.

MR. CARROLL: No further questions.

MR. WARBURGH: Nothing, your Honor.

THE COURT: You may step down, Mrs. Bates. Thank you.

(Witness excused.)

THE COURT: You may call your next witness, Mr. Carroll.

MR. CARROLL: That's all. Defense rests.

THE COURT: Government?

[134] MR. WARBURGH: Your Honor, the Government has nothing further, no rebuttal.

THE COURT: Government rests, both sides rest.

All right, up front and center.

Would you, Mr. Carroll, prefer to argue orally now or would you prefer to submit memoranda with your own proposed findings based upon the record that has been had here? I will give you the opportunity, if you wish.

MR. CARROLL: Can I think about that for a couple of seconds, at least?

I hadn't considered that.

THE COURT: I will let you argue now and have both sides argue now on the motions and I think I might be able to make a decision immediately. But if you wish, I will give you an opportunity to submit your proposed findings based upon the record as you know it, and give Mr. Warburgh the same opportunity with your memorandums. I think the issue here is not that insurmountable. I think there are a number of cases that seem to pave the way that are almost inescapable. But you choose your avenue.

[135] MR. CARROLL: How much time would I have to submit proposed findings of fact?

THE COURT: How much time would you need?

MR. CARROLL: A week.

MR. WARBURGH: It doesn't make any difference.

THE COURT: Any objection to giving him this time?

MR. WARBURGH: I have no objection.

THE COURT: All right. Both sides rest.

The Court will reserve decision. The defendant is granted one week.

MR. CARROLL: I would just like to make one thing clear. Will that be one week in which to mail out—

THE COURT: When I say a week, if it comes to me two days later or a day later, I won't hold you to that. Today is October 3. October 10.

Now, the 9th is a holiday. So let's make it October 11th. In other words, defendant to file with Court by 10/11. Instead of sending it to the Brooklyn Clerk's Office where it would be filed ordinarily and then sent on to me, send it directly to me. You have the address here, 900 Ellison Avenue. Send it to me directly. That [136] way we will circumvent the Clerk's Office there and save a little bit of time. So mail it to me by the 10th and I will get it on the 11th.

Mr. Warburgh, I am not going to give you much time to answer it.

MR. WARBURGH: By Friday of that week.

THE COURT: All right, Government to answer and you are here now so you can walk next door and file it with me by 10/13. That's your proposed findings, and I would like you to please stick to the record as it is. You have a photocopy of all the Government Exhibit 1 papers that were used. So refer specifically to any paper or date in your memorandum, if you wish, and I would like you particularly to answer the questions that I would put to you that are posed by the opinion that I showed you this morning that was decided by our Circuit Court very recently, decided December 27, 1972, slip opinion which I received this morning in the case of Frank Martire, Jr., against Selective Service Board 15, and the Capobianco case which you know about, the Johnson case which I assume you know about, and, of course, I got Nordlof, Geary and Ellert. Those are the [137] cases which I think are the ones which would raise the issues that I believe are before us here.



MR. WARBURGH: Could you give me the date of that opinion by the Second Circuit Court of Appeals?

THE COURT: Decided December 27, '72. Their number is 932—the September term of 1971. Take a peak at it and get whatever numbers you want. This is what you may want. Docket No. 35630. If you wish, Mr. Carroll, before you leave, my clerk will make a photocopy of this. It's only a two-page decision.

MR. WARBURGH: Can the Government keep possession of Government Exhibit 1, which is the Selective Service file, for the purposes of drafting our proposed findings of fact?

THE COURT: Sure.

(At 4:45 o'clock p.m. the trial was concluded.)

. . . .

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#### EXHIBITS

Government's Exhibit No.	Description	For Id.	In Ev.
1	Selectric Service File		12
2	Card	19	78

SUPREME COURT OF THE UNITED STATES

No. 73-1513

UNITED STATES, PETITIONER

v.

RONALD S. JENKINS

ORDER ALLOWING CERTIORARI—Filed May 28, 1974

The petition herein for a writ of certiorari to the United States Court of Appeals for the Second Circuit is granted. The case is set for oral argument in tandem with No. 73-1395.